IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 283-DB of 2005
Date of decision: 23.1.2007

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Javed

..APPELLANT

VS.

State of Punjab

..RESPONDENT

with **Criminal Appeal No. 293-DB of 2005**

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Sehraj Mohd.

..APPELLANT

VS.

State of Punjab

..RESPONDENT

and **Criminal Appeal No. 324-DB of 2006**

****

Zeeshan Hussain

..APPELLANT

VS.

State of Punjab

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. J.S. Bhatia, Advocate
for the appellant Sehraj.

Mr. Dhruv Dayal, Advocate
for the appellants Javed and Zeeshan Hussain

Mr. J.S. Dhillon, DAG Punjab assisted by
Mr. Arihant Jain, Advocate

ARVIND KUMAR, J.

Appellants namely Javed, Sehraj Mohd. @ Sazi and Zeeshan Hussain have preferred the above referred criminal appeals respectively

bearing Nos. 283-DB, 293-DB of 2005 and 324-DB of 2006 impugning the judgment and order of their conviction dated 25.2.2005 passed by learned Sessions Judge, Sangrur and thereby sentenced all of them imprisonment for life with a fine of Rs.5000/- each for committing an offence under Section 302 read with Section 34 of Indian Penal Code. In default of payment of fine, the appellants have been ordered to undergo further imprisonment for one year. Since all the appeals have arisen from a common judgment and order of the learned trial court, we propose to dispose of them by this common judgment.

Before proceeding further, it is desirable to take into account firstly the prosecution version.

On 7.4.2000 ASI Sukhdev Singh, Incharge City Police Station, Malerkotla (PW.7) along with other police officials was present at bus stand, Malerkotla. Som Nath (PW.3) met him and got recorded his statement (Ex.PE) and thereby informed them about the murder of his daughter namely Meena Bansal wife of Alkesh Bansal, who is residing at Mahabir Nagar, Malerkotla alongwith her family, by some unidentified persons. It is further stated by him that on that very day, at about 4 O'clock, his uncle Chaman Lal, whose factory is situated near the house of his son Alkesh, telephonically informed him about the said murder of his daughter-in-law Meena Bansal, upon which he reached at the spot and noticed the dead body of his daughter-in-law lying on the floor of the house, smeared with blood and having various injuries, caused with sharp edged weapon, on her person. He further mentioned that neither he nor his son has enmity with anybody.

On this, ASI Sukhdev Singh (PW.7), after making his endorsement (Ex.PE/1) on the statement of Som Nath, send the same to the police station for registration of the case, on the basis of which FIR No. 80 dated 7.4.2000 under Section 302 IPC was registered by ASI Nirmal Singh.

On reaching the spot, ASI Sukhdev Singh prepared the inquest report (Ex.PC) of the dead body. He inspected the spot and prepared the

site plan of the place of occurrence. He lifted the blood stained earth and sealed the same in a separate parcel. One knife (Ex.P5) and chappals (Ex.P8), recovered from the spot were also taken into police possession vide memo Ex.PJ/1 and Ex.PL respectively. He also recorded the statements under Section 175 Cr.P.C. and send the dead body through Constables Bhupinder Singh and Amarjit Singh to Civil Hospital, Malerkotla for post-mortem examination, where Dr. Harpreet Singh (PW.1) conducted autopsy on the dead body of Meena Bansal vide PMR (Ex.PA). During post-mortem examination he found as many as 13 injuries on different portions of the dead body. He opined the cause of death in this case as massive haemorrhage due to cutting of major vessels in the neck. After post-mortem examination, he handed over the dead body and other belongings to the deceased to the police.

It appears from record that after almost one year of the occurrence, on 15.4.2001 the investigations of this case were entrusted to SI Surinder Singh (PW.8) of CIA Staff, Bahadur Singh Wala.

Thereafter, it is on 12.5.2001 SI Surinder Singh recorded the statement of Suresh Kumar Jain (PW.11) before whom all the accused-appellants had allegedly made extra judicial confession qua the commission of offence. On 13.5.2001, all the accused were produced by Dinesh Kumar Jain (PW.9) before the police and according to the prosecution all of them had made extra judicial confession before him as well regarding their involvement in the murder of Smt. Meena Bansal.

All of them were arrested and interrogated by PW.8 SI Surinder Singh. On 13.5.2001, during the course of interrogation accused Zeeshan Hussain suffered a disclosure statement Ex.PP qua throwing of a knife in the nursery, near the railway station. However, no recovery was effected pursuant to that disclosure statement.

On 14.5.2001 the accused were produced before the Sub Judicial Magistrate, Malerkotla with a request of their police remand. However, before the Court, all the accused-appellants Shehraj Mohd., Javed

and Zeeshan made their statements under Section 164 Cr.P.C. and thereby admitted their involvement in the murder of Smt. Meena Bansal and further they all disclosed the manner in which they all committed the offence. The then learned SDJM, Malerkotla Sh. S.K. Sachdeva (PW.16) got recorded their statements respectively as Ex.PDD, Ex.PEE and Ex.PFF. Thereafter, the persons of the accused were handed over to the police for further interrogation and investigations.

On 15.5.2001 the accused-appellant Zeeshan Hussain, while in police custody suffered disclosure statement (Ex.PF) regarding concealing of one golden ring at a place near the railway station whereas accused Javed made a disclosure statement Ex.PG with regard to keeping of one lady wrist watch, in the street by the side of his house. Both the accused, pursuant to the above-said disclosure statements got recovered golden ring (Ex.P7) and lady wrist watch (Ex.P6) from the pointed place. Both the articles were identified by Alkesh Bansal (PW.4) as that of his deceased wife Smt. Meena Bansal. The same were taken into possession vide recovery memo Ex.PH and Ex.P-I respectively.

Thereafter, on 16.5.2001 accused Javed pursuant to his disclosure statement Ex.PU got recovered the scooter used in the commission of offence. The said scooter was also taken into police possession vide recovery memo Ex.PV.

The photographs of the place of occurrence, so handed over by Alkesh Bansal (PW.4) to the police, were also taken into possession vide recovery memo Ex.PY.

Thereafter, on completion of usual formalities of investigations, final report under Section 173 Cr.P.C. was prepared against the accused and the same was filed in the Court for their trial.

Learned Illaqa Magistrate committed the case to the court of Sessions for trial of the accused-appellants, whereof the trial court framed the charge against the accused-appellants for committing an offence under

Section 302 read with Section 34 IPC.

To substantiate the charge against the accused-appellants, the prosecution examined as many as 16 witnesses. PW.1 Dr. Harpreet Singh had conducted the post-mortem examination on the dead body of Smt. Meena Bansal. PW.2 HC Amarjit Singh, tendered in his evidence affidavit Ex.PD regarding depositing of case property with FSL, Chandigarh on 24.4.2000. PW.3 Som Nath is the informant in this case, on the basis of whose statement, present case was registered. PW.4 Alkesh Bansal is the husband of the deceased Smt. Meena Bansal. PW.5 ASI Amrik Singh is one of the witness to the recoveries of blood stained earth, knife and chappals effected from the spot during the investigations. PW.6 ASI Jaswant is also attesting witness to the disclosure statements made by the accused-appellants Zeeshan and Javed during the interrogation and also to the recoveries effected pursuant to their disclosure statement. PW.7 SI Sukhdev Singh had initially investigated the case. PW.8 SI Surinder Singh also conducted part investigations of this case. Both of them deposed about the investigations carried out by them which have been discussed in preceding paras. PW.9 Dinesh Jain is the witness before whom the accused-appellant Javed had made extra judicial confession and he had produced them before the police. PW.10 Palwinder Singh Draftsman prepared the scaled site plan of the place of occurrence and proved the same as Ex.PZ. PW.11 Suresh Kumar is the one before accused-appellant Zeeshan had made extra judicial confession. PW.12 Mohd. Aslam, who according to the prosecution, had seen the accused Javed on the day of occurrence at 4 O' clock near his nursery, had not supported the prosecution case and he turned hostile. PW.13 MHC Karamjit Singh and PW.14 ASI Gurdarshan Singh also tendered affidavits Ex.PBB and Ex.PCC respectively in their evidence. PW.15 Paramjit Singh clicked the photographs of the place of occurrence and lastly the prosecution examined PW.16 S.K. Sachdeva, who at the relevant time was posted as Sub Division Judicial Magistrate, Malkerkotla and before whom the accused-appellants got recorded their statements under Section 164 Cr.P.C.

Besides, the prosecution also tendered in evidence report of

FSL as Ex.PJJ.

The accused-appellants when examined under Section 313 Cr.P.C. false implication in the case and pleaded innocence.

In their defence, they examined Smt. Sneh Lala, Inspection Clerk, office of District & Sessions Judge, Sangrur as DW.1

After analyzing the evidence adduced by the prosecution, learned trial court vide the impugned judgment dated 25.2.2005 convicted and sentenced the accused in the manner indicated above, which has necessitated the accused-appellants to prefer the instant appeals.

We have heard learned counsel for the parties and with their assistance have also gone through the record carefully.

There is no direct evidence against the appellants. The case rests on the circumstantial evidence. Where the evidence is purely circumstantial in nature, every incriminating circumstance must be clearly established beyond doubt by reliable and clinching evidence and the evidence so proved must form a chain of events which was the only irresistible conclusion about the guilt of the accused can safely be drawn and no other hypothesis against the guilt is possible. The Court must satisfied itself that various circumstances in the chain of events have been established clearly and such complete chain of events must be such as to rule out all reasonable likelihood of the innocence of the accused.

First of all we take note of the judicial confessions Ex.PDD, Ex.PEE and Ex.PFF made by the appellants Sehraj Mohd., Javed and Zeeshan respectively before PW.16 S.K. Sachdeva, the then Sub Divisional Judicial Magistrate, Malerkotla. There are many striking features existing which casts a shadow of doubt on the judicial confessions, which were retracted by the accused-appellants in their statements under Section 313 Cr.P.C. stated to be under police pressure. From the plain language of Section 164 Cr.P.C. and the Rules and Regulations framed by this Court

contained in Chapter 13 Volume III regarding the recording of confessional statement of an accused under Section 164 Cr.P.C., it is manifest that the said provisions emphasis an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 Cr.P.C. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of Section 164 Cr.P.C. and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In the instant case, on 14.5.2001 the accused were produced before the Magistrate by the police for obtaining the police remand for which 7 days police remand was granted. Thus, the accused were in police custody and obviously hand-cuffed. Therefore, in that situation, it was bounden duty of the Magistrate to give the accused sufficient time for reflection and to ensure that during the time of reflection the accused were totally out of police influence, but no such time was given. The statement of PW.16 S.K. Sachdeva also do not suggests that he had taken any care to ascertain that there was any third degree method used by the police to extract confession. The another requirement is that the Magistrate shall explain to the person making confession that he is not bound to make confession and that if he does so, it may be used as evidence against him. It is desirable that sufficient time gap be given to the accused to re-consider whether he still wanted to make statement after warning Though PW. 16 has stated of having given the said statutory warning, but no such document in that regard had been prepared, rather he admitted in his cross-examination that the same had been

mentioned by him after recording their confessional statements. No doubt, oral warning has a reflection in the order Ex.PGG, but a bare perusal of sequence of events suggests that vide order Ex.PHH/1, he had given the police remand of the appellants till 16.5.2001 and immediately underneath vide order Ex.PHH/2 he mentioned that "at this stage the accused intends to make some statements and let their statements be recorded". There is no reflection in the order Ex.PHH/2 with regard to any such oral warning which PW.16 claims to have made before recording their confessional statement. There is also no assurance to protection from any sort of apprehending torture or pressure from police in case they declined to make confessional statements. Therefore, this circumstance of judicial confession does not inspire confidence. The another aspect which renders the judicial confessions invalid is that the Magistrate had administered oath to the accused-appellants before recording their confession and this makes the judicial confessions Ex.PDD, Ex.PEE and Ex.PFF inadmissible in evidence. Administering oath is barred in the recording of confessional statement by the clear provision of sub-section (5) of Section 164 of the Criminal Procedure Code, which reads as under:-

> "Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded."

Confession should be recorded in the manner provided for recording statement of an accused/ suspect and not in the manner provided for recording evidence. If it is recorded in the manner provided for recording evidence by administering oath, then it loses its character in so far the maker is concerned. The fact of administering oath at the recording of confession virtually means that the maker is compelled to give evidence against him, placing him in the status of a witness at the stage of investigation in violation of Art. 20(3) of the Constitution of India read with sub-section (5) of Section 164 of the Code of Criminal Procedure. Administering oath for recording confession will only mean the recording of evidence of the maker

for use at a subsequent stage against the maker and which is prohibited in law. This issue was also for consideration before a Division Bench of Gauhati High Court in case **Akanman Bora Vs. State of Assam 1988 Crl. L.J. 573,** wherein the Division Bench following the ratio laid down in the cases of **Philips Vs. State of Karnataka 1980 Crl. L.J. 171 (DB)** and **State Vs. Suram Singh, 1976 Crl. L.J. 96 (DB),** while discussing the scope of administering an oath to the accused has held as follows:

> "Oath is meant to bind down the maker of statement. Therefore if a Magistrate administer the oath before recording confession; it would not be open to the accused to retract at that time or even subsequently before the trial court, because in that case he would be subject to the consequences of his oath/ solemn affirmation".

Learned Puisne Judge of the Division Bench also endorsed the view taken by his Senior Judge that giving an oath solemn affirmation before recording the confession of the appellant has vitiated the confession and that has made it inadmissible in evidence.

Thus, once the above-said judicial confessions are excluded from the zone of consideration, there left the extra judicial confessions made only by Zeeshan Hussain and Javed before PW.11 Suresh Kumar and PW.9 Dinesh Jain respectively. Normally there is human psychology that nobody confesses that he has committed crime, rather conceals the same. In the instant case, occurrence had taken place on 7.4.2001 and as such, there was no occasion for accused-appellants Javed and Zeeshan to make an extra judicial confession before the said witnesses after about one year. No doubt, it has come in the evidence of PW.8 SI Surinder Singh that on 7.5.2001 he had received a secret information that the crime had been committed by accused-appellants Javed, Sehraj and Zeeshan and he raided their houses but it is only his mere assertion, as the prosecution has not placed on record any document of having any secret information on 7.5.2001 by SI Surinder Singh and then having raided the houses of the accused-appellants. No such entry in daily diary register has been placed on record to prove the same.

The matter does not rest here. Normally, a person before whom extra judicial confession is made, is expected to be a person in authority; could render help to the accused; should be thick having affinity with the accused; so that the accused could repose confidence in him. However, the prosecution has not been able to prove the said tests. It is evident from the statement of PW.9 Dinesh Jain that he had known to the accused Javed as his father Mushtaq Ahmed was residing at Kallon Gate, Malerkotla when he was running the coal depot near the club chowk whereas PW.11 Suresh Kumar has stated that accused-appellant Zeeshan was known to him as he had worked at his residence for white washing. There is nothing in their statements to suggest that they were so thick or having any close affinity so that the accused could repose confidence in them while making their extra-judicial confessions. So much so, PW.11 Suresh Kumar has admitted in his cross-examination that accused Zeeshan had worked at his house one and a half year prior to the present occurrence and he does not his family and has also admitted to the extent that he has no relationship with him. Both the witnesses PW.9 Dinesh Jain and PW.11 Suresh Kumar are also not the persons having any authority so that they could render any help to the accused persons. Both of them have admitted in their cross-examinations that they are not holding any office of public importance or having any authority and their cross-examinations further suggest that they were not having any kind interaction or liaison with the local police by which they could extend any kind of help to the accused-appellant in their surrender. The conduct of PW.11 Suresh Kumar also assumes great importance. He did not react and had not detained the accused-appellants for producing before the police, but very casually he allowed them to go and to visit him again after 2-3 days, so that, in the meantime, he would have a talk with the police for their surrender. He, as discussed above, admittedly had no connection in the police department and in this situation it is very surprising as to how he would have arrange for their surrender. Thus, the sequence of events suggests that the circumstance of extra judicial confession is highly suspicious and does not inspire confidence and no reliance can be placed on such extra judicial confessions.

Coming to the question of recoveries, it is important to stress

that recoveries are always corroborative in nature only. In the instant case, the prosecution version is that the wrist watch (Ex.P6) and golden ring (Ex.P7) were got recovered by virtue of disclosure statements of Javed and Zeeshan appellants. The said recoveries do not inspire confidence for variety of reasons. Firstly, Som Nath (PW.3), the father-in-law of the deceased Meena Bansal, while recording his statement Ex.PE, on the basis of which present case was registered, had not disclosed about missing of said articles. Secondly, those articles were shown to the witnesses straightway, without mixing them with other similar articles and thirdly that it is itself the case of the prosecution that the very purpose of commission of crime was stealing and in that situation, it is highly unnatural that the accused-appellant would have kept those articles with them for a period of one year and to create evidence against them, rather they would have disposed of the same immediately after the occurrence in order to achieve their objective.

Therefore, there is no chain so far the circumstances are concerned. The circumstances which the prosecution has relied upon do not point unerringly towards the guilt of the accused. The prosecution has thus miserably failed to prove any of the circumstance against the accused what to say of proving the chain of circumstances. The court cannot be allowed the suspicion to take the place of proof. It is a matter of great regret and concern to everybody that for this murder nobody could be punished. The present accused-appellants, thus, cannot be punished unless the court can be sure of their guilt. They certainly deserves the benefit of doubt. We, therefore, allow these appeals and set aside the judgment and order of conviction and sentence passed against the appellants. The accused-appellants are acquitted giving benefit of doubt. They be set at liberty, if not required in any other case.

(ARVIND KUMAR)
JUDGE

JANUARY 23,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 293-DB of 2005
Date of decision: 23.1.2007
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Sehraj Mohd.

..APPELLANT

VS.

State of Punjab

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. J.S. Bhatia, Advocate
for the appellant Sehraj.

Mr. J.S. Dhillon, DAG Punjab assisted by
Mr. Arihant Jain, Advocate

ARVIND KUMAR, J.

In view of the detailed judgment passed in Crl. Appeal No.283-DB of 2005, the instant appeal stands allowed.

(ARVIND KUMAR)
JUDGE

JANUARY 23,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 324-DB of 2005
Date of decision: 23.1.2007
****

Zeeshan Hussain

..APPELLANT

VS.

State of Punjab

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
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ARVIND KUMAR, J.

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